CF0000059966

(ग्रा.) 1692/98 (2) D3(ग्रा.)

APPEAL PRISONER

S.T. No 139/97

No. 21/98 Name लुहरू

Father's Name तोहें Resident आज - उलनार थाना फेथरपुर जिला - अलवर (राज.)

Age ५३ वर्ष Sentenced to आजीवन कारावास on 22.4.98

Under Section 302 I.P.C. by विशेष न्यायाधीश जगदलपुर अलवर (राज.)

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :-
2. Date of which copy received :- 1.6.98
3. Date on which appeal sent :- 13.6.98
4. Whether the prisoner wished to be represented or not :- Yes / No.

No. 21/98 Name लुहरू उ० तोहें

Continued in जेल Jail जगदलपुर - अलवर (राज.)

No. 316 /जेल/98 Dated 13.6.98

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर (अलवर) (राज.) together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
केन्द्रीय जेल जगदलपुर

Superintendent-Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office. 23.6.98

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 15 dated 24.6.98

Forwarded to the मान्नीय सत्र न्यायाधीश महोदय जगदलपुर

C. R. MAGISTRATE

Date of receipt in Applieate Court

XI-HC-22

(29)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A. 1692 सन् 1998 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

1-12-2005

Mr. Abhay Tiwari, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment.

By this appeal through the Superintendent, Central Jail, Jagdalpur, accused/appellant Ludru has questioned the legality of judgment of conviction and sentence dated 23-4-1998 awarded by the Special Judge, Jagdalpur, in Sessions Trial No.139/97, whereby learned Special Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the I.P.C. for committing the murder of his brother Ratiram, sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that the wife of Ratiram gave merg intimation (Ex.P-2) to Police Station: Frazerpur on 27-2-1997 to the effect that yesterday (Wednesday) his brother-in-law Ludru with the intention to murder her husband attacked on his neck with an axe as a result of which he died on the spot. On receiving this merg intimation, Station House Officer, Police Station: Frazerpur A.K. Nag registered the F.I.R. Ex.P-1 and prepared the site plan Ex.P-9. After giving notice to the Panchas, he also prepared the Panchnama of the body of Ratiram Ex.P-12 and sent the body for post-mortem examination vide Ex.P-13. During the police custody, the accused/appellant gave information under Section 27 of the Evidence Act, Ex.P-3, regarding the place where the weapon of offence axe was kept by him and in pursuance thereof he got the axe recovered under Ex.P-4. The Investigating Officer also took into possession the blood stained soil as well as the plain soil from the

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(30)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

place of occurrence and sent the body for post-mortem examination to Maharani Hospital, Jagdalpur, where Dr. Vijay Thakur conducted post-mortem on the body of Ratiram. He prepared the post-mortem report Ex.P-7 in which he noticed three incised wounds, one on the left side of the neck in the size of 5" x 2 ½" x 2", second incised wound in the size of 1" x ¼" center of forehead, and third incised wound was obliquely placed on posterior aspect of the left shoulder in the size of 2 ½" x 1½ " x 1" muscle deep, bones were exposed. In the opinion of the doctor, cause of death was haemorrhage and shock. The doctor also gave opinion Ex.P-8 that the injuries which were found on the body of Ratiram could be caused by the axe recovered at the instance of the accused. The clothes of the accused were taken into possession under Ex.P-11.

After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur from where learned 3rd Additional Sessions Judge, Jagdalpur received the case on transfer.

The prosecution in order to prove the offence against the accused/ appellant examined 10 witnesses. Statement of the accused was recorded by learned Special Judge in which the accused denied the prosecution evidence and stated that the witnesses have stated against him on account of the animosity, he is innocent and falsely implicated in the crime.

After hearing the arguments of learned counsel for the parties, learned Special Judge convicted and sentenced the accused/appellant in the manner mentioned in the earlier part of this judgment.

We have heard Mr. Abhay Tiwari, learned counsel for the accused/ appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr.

[पीछे देखिये

(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Akhil Mishra, learned Panel Lawyer on behalf of the State/ respondent. We have perused the evidence and the judgment of the trial Court.

Learned counsel for the accused/appellant did not dispute the nature of death of Ratiram. Apart from that, as per the evidence of eyewitnesses Nadi (PW-2) & Budru (PW-3) who witnessed the crime, also as per the evidence of Dr. Vijay Thakur (PW-6) who conducted the post-mortem and noticed three incised wounds on the vital part of the body and stated that the death of Raitram was homicidal in nature, in view of the ocular evidence and medical evidence, it is established that the death of Ratiram was homicidal in nature.

Now, coming to the involvement of the accused/appellant in committing the murder of his brother Ratiram, even though Nohar Dei (PW-10), who is the daughter of the accused, and Kamlu (PW-5) who took deceased Ratiram to the house of Ludru for consuming Sulphi, have turned hostile, but Nadi (PW-2) & Budru (PW-3) have stated that they had witnessed the crime and assaulting deceased Raitram by the accused/appellant with the axe. Learned counsel for the accused/appellant argued that on account of animosity, these two witnesses have deposed against the accused/appellant. But, we do not find any substance in this argument for the reason that in cross-examination of these two witnesses nothing has been brought on record which indicates that on account of any animosity these witnesses have deposed against the appellant. Their evidence stands corroborated by the evidence of Aasmati (PW-1) who was informed by Bisu (PW-8) and to whom Nadi (PW-2) informed about the incident and very next day morning Aasmati (PW-1) lodged the report (Ex.P-2) at the Police Station. The evidence of these witnesses (PW-2 & PW-3) has also been corroborated by the medical evidence wherein Dr. Vijay Thakur has stated that there were three incised wounds on the neck & shoulder of the deceased and he has further stated that these injuries could be caused by the axe which was

[पीछे देखिये

(32)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

recovered at the instance of the accused. The fact of involvement of the accused/appellant in the crime in question is further established by the fact that the axe, the weapon of offence, was recovered at the instance of the accused in pursuance of the information Ex.P-5 given by the accused/appellant. As per the Forensic Science Laboratory's report Ex.P-15, blood was found on the axe and clothes of the accused. Therefore, the cumulative effect of all the above factors i.e. the evidence of eyewitnesses, medical evidence and recovery of weapon leaves no room for doubting the complicity of the accused in the crime in question.

Now, coming the question of offence committed by the accused, the manner in which the accused/appellant attacked the deceased on the vital part of the body i.e. neck that too with a deadly weapon, the axe, indicates the intention that he wanted to commit his murder and he made three blows one after another with the axe that was sufficient in the ordinary course of nature to cause the death of deceased Ratiram. It has been opined by the doctor that injury No.1, which was found on the neck was sufficient in the ordinary course of nature to cause death.

In view of the above discussion, we are of the opinion that the finding of the trial Court convicting the accused under Section 302 of the I.P.C. for committing the murder of Ratiram is based on legal evidence and sound reasoning, and does not require any interference by this Court.

Therefore, the appeal being devoid of merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
V.K. Shrivastava
Judge

Soma

[पीछे देखिये

13.2.06